APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,294	08/01/2001	Richard Cerami	020366-077410US	5648

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EXAMINER
JACOBS, LASHONDA T

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/921,294	CERAMI ET AL.
	Examiner	Art Unit
	LaShonda T Jacobs	2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>01 August 2001</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-14</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-14</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5/08/2002</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Drawings

1.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they

do not include the following reference sign(s) mentioned in the description: note reference

numeral 102 Figure 3 on page 7, line 23 and reference numeral 400 of Figure 4 on page 8, line

15. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the

Office action to avoid abandonment of the application. Any amended replacement drawing sheet

should include all of the figures appearing on the immediate prior version of the sheet, even if

only one figure is being amended. The replacement sheet(s) should be labeled "Replacement

Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the

drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

and informed of any required corrective action in the next Office action. The objection to the

drawings will not be held in abeyance.

2.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they

include the following reference character(s) not mentioned in the description: note reference

numeral 106 of Figure 3, reference numeral 404 of Figure 4, reference numeral 904 of figure 9

and reference numeral 1110 of Figure 10. Corrected drawing sheets in compliance with 37 CFR

1.121(d), or amendment to the specification to add the reference character(s) in the description in

compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid

abandonment of the application. Any amended replacement drawing sheet should include all of

the figures appearing on the immediate prior version of the sheet, even if only one figure is being

amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header

(as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes

are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in

abeyance.

Specification

3.   The disclosure is objected to because of the following informalities: Applicants need to

provide the serial numbers for the cross references to related applications.

        Appropriate correction is required.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims **1-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagavath et

al (hereinafter, "Bhagavath", 6,374,288) in view of Dev et al (hereinafter, "Dev", 5,751,933).

        As per claim **1**, Bhagavath teaches a method for performance managing a service in a video

and data network comprising:

- identifying one or more users receiving the service (abstract, col. 3, lines 61-67, col. 6, lines 20-31 and col. 8, lines 55-67);

- identifying a physical network (Ethernet) transport in the video and data network for the one or more users (col. 7,lines 66-67 and col. 8, lines 1-11);

- monitoring performance data through the physical network transport (col. 9, lines 11-31); and

- determining one or more threshold values for one or more users' service (col. 9, lines 23-31).

However, Bhagavath does not explicitly disclose:

- identifying a virtual network transport in the video and data network for the one or more users;

- monitoring performance data through the virtual network transport; and

- determining if the performance data violates at least one or more threshold values.

Dev teaches a system for determining the status of an computer entity in a computer network including:

- identifying a virtual network transport in the video and data network for the one or more users (abstract, col. 3, lines 44-48, lines 56-66 and col. 5, lines 5-12);

- monitoring performance data through the virtual network transport (col. 5, lines 5-23 and col. 7, lines 45-57); and

- determining if the performance data violates at least one or more threshold values (col. 8, lines 45-66).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by incorporating a virtual network to send

data over a network in order to monitor the status of components and generate an alarm in

response to fault on the network therefore providing a network management system that detects,

isolate and repair problems automatically.

As per claim **14**, Bhagavath teaches a method for performance managing a service in a

video and data network providing video and data services, wherein the network comprises a

video cloud, data cloud, and video/data cloud comprising:

- identifying one or more users receiving the service (abstract, col. 3, lines 61-67, col.

  6,lines 20-31 and col. 8, lines 55-67);

- identifying a physical network (Ethernet) transport for the video cloud, the data cloud

  and the video/data cloud for the one or more users (col. 7,lines 66-67 and col. 8, lines

  1-11);

- monitoring performance data through at least one of the video cloud, data cloud and

  the video/data cloud the physical network transport (col. 9, lines 11-31); and

- determining one or more threshold values for one or more users' service (col. 9, lines

  23-31).

  However, Bhagavath does not explicitly disclose:

- identifying a logical (virtual) network transport for the video cloud, data cloud and the

  video/data cloud for the one or more users;

- monitoring performance data through at least one of the video cloud, the data cloud the

  video/data cloud logical (virtual) network transport; and

- determining if the performance data violates at least one or more threshold values.

Dev teaches a system for determining the status of an computer entity in a computer

network including:

- identifying a logical (virtual) network transport for the video cloud, data cloud and the

    video/data cloud for the one or more users (abstract, col. 3, lines 44-48, lines 56-66 and

    col. 5, lines 5-12);

- monitoring performance data through at least one of the video cloud, the data cloud the

    video/data cloud logical (virtual) network transport (col. 5, lines 5-23 and col. 7, lines

    45-57); and

- determining if the performance data violates at least one or more threshold values (col.

    8, lines 45-66).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by incorporating a virtual network to

send data over a network in order to monitor the status of components and generate an alarm in

response to fault on the network therefore providing a network management system that detects,

isolate and repair problems automatically.

As per claim **2**, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- issuing an alarm if the performance data violates at least one the one or more threshold

    values.

Dev teaches a system for determining the status of an computer entity in a computer

network including:

- issuing an alarm if the performance data violates at least one the one or more threshold

  values (col. 8, lines 45-66).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by generating an alarm when an error

rate exceeds a predetermine limit in order to fix the network fault in a timely and efficient

manner.

As per claim **3**, Bhagavath discloses wherein monitoring the performance data comprises:

- monitoring real-time data (col. 9, lines 23-27).

As per claim **4**, Bhagavath discloses wherein monitoring the performance data comprises:

- monitoring non-real-time data (col. 9, lines 23-27).

As per claim **5**, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- storing the performance data.

Dev teaches a system for determining the status of an computer entity in a computer

network including:

- storing the performance data (col. 7, lines 45-64).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by incorporating an event/statistics log to

store status information about the network components in a timely and efficient manner.

As per claim **6**, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- creating reports using the stored performance data.

Dev teaches a system for determining the status of an computer entity in a computer network including:

- creating reports using the stored performance data (col. 7, lines 45-64).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by incorporating an event/statistics log to store status information and create reports about the network components in a timely and efficient manner.

As per claim 7, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- issuing an alarm based on the reports.

Dev teaches a system for determining the status of an computer entity in a computer network including:

- issuing an alarm based on the reports (col. 8, lines 45-66).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm when an error rate within the report exceeds a predetermine limit in order to fix the network fault in a timely and efficient manner.

As per claim 8, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- identifying a set of users impacted by the performance data violating the threshold values.

Dev teaches a system for determining the status of an computer entity in a computer network including:

- identifying a set of users impacted by the performance data violating the threshold values (col. 8, lines 45-66).

Given the teaching of Dev, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by monitoring the status of network components and generating an alarm in response to fault on the network therefore providing a network management system that detects, isolate and repair problems automatically.

As per claim **9**, Bhagavath discloses wherein determining the one or more threshold values comprises:

- identifying the a level of service for the one or more users' service (col. 9, lines 23-36); and

- using the level of service in determining the one or more threshold values (col. 9, lines 23-36).

As per claim **10**, Bhagavath discloses:

- wherein the service comprises a Digital Subscriber Line (xDSL) service (col. 1, lines 47-50, col. 5, lines 59-67 and col. 6, lines 1-11).

As per claim **11**, Bhagavath discloses:

- wherein the service comprises a Very high bit rate DSL (VDSL) service (col. 1, lines 47-50 and col. 2, lines 53-61).

As per claim **12**, Bhagavath discloses wherein the video and data network comprises:

- a xDSL network (col. 1, lines 47-50, col. 5, lines 59-67 and col. 6, lines 1-11).

As per claim **13**, Bhagavath discloses wherein the video and data network comprises:

- a VDSL network (col. 1, lines 47-50 and col. 2, lines 53-61).

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

U.S. Pat. No. 5,504,921 to Dev et al

U.S. Pat. No. 5,261,044 to Dev et al

U.S. Pat. No. 5,295,244 to Dev et al

U.S. Pat. No. 5,974,237 to Shurmer et al

U.S. Pat. No. 5,655,081 to Bonnell et al

U.S. Pat. No. 5,870,558 to Branton et al

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to LaShonda T Jacobs whose telephone number is 703-305-7494.

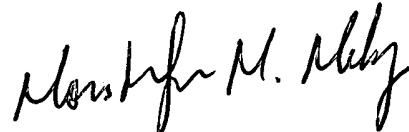The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent
Application Information Retrieval (PAIR) system. Status information for published applications
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system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR
system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
October 12, 2004

MOUSTAFA M. MEKY
PRIMARY EXAMINER